

SB 845-848
Testimony by James Benison

Thank you for this opportunity to provide input on these bills. I wanted to give you a bit of an in-the-trenches perspective on why these are necessary improvements to Michigan's criminal laws.

SB 845 allows a domestic assault conviction that was deferred under the first offender provision to be considered if the assailant has another domestic violence incident. A sentence that truly helps a first offender figure out how better to treat someone they say they love, and successfully rehabilitates that person, is a tremendous opportunity. I have enough cases on my desk; I do not need another repeat offender coming through. But batterers are often very good at manipulating the system, and they can behave themselves for a period of time if it is in their best interests, but their true nature will come out again. In such a case, pretending that they never previously committed a domestic assault is ignoring reality, and giving the assailant yet another opportunity to convince the victim that the legal system will protect assailants at victim's expense. This bill addresses that inequity. In addition, the first offender provision can only be given with the consent of the prosecutor's office, and there have been times when I have been reluctant to do so because I fear a repeat offense is quite likely. Such a person can use the resources available through probation most, but that person is not given the opportunity because of whatever red flags exist. This bill will alleviate many of those concerns and give those convicted as full an incentive as possible to rehabilitate themselves. This is the carrot and stick approach maximizes the ability to achieve justice no matter which way the offender ends up going.

SB 847 increases the penalties for repeat acts of domestic violence. To put it bluntly, if I beat up my wife and am convicted three times, it is less serious than attending a dog fight, writing a bad check, or turfing a large lawn once. I do not want any of those things to occur, but proportionately, the third time committing an offense generally demonstrates the person is more of a threat, and the law should recognize that danger to our community and the families that are affected by domestic violence. SB 846 revises the sentencing guidelines to comport with the changes.

Finally, SB 848 falls in line with what many other states have done, and makes strangulation a felony per se. I'd like to help you understand why this is necessary.

Some time ago, I handled a case where the assailant, the victim's husband, attacked her with a belt, and then proceeded to strangle her. He claimed to be upset because he thought she was cheating on him. He put his hands around her neck and began to squeeze. She was able to plead with him to let her go, but shortly thereafter he resumed his attack. She was strangled until she lost consciousness. Another person who was living at the same house pulled the assailant off of the victim, and she was able to flee to safety. Alert law enforcement officers noticed that she had petechiae, which are broken blood vessels in the victim's eyeballs, and took pictures of the injuries. From what the medical experts told me, this is a sign of serious trauma as the pressure caused by constricted blood flow was enough to burst the capillaries. The victim was taken to the hospital, but there was not a lot of visible damage - just a bruise from the belt

buckle, the petechiae, and some light marks on her neck. She reported difficulty speaking and swallowing, which continued through the preliminary examination two weeks later. On these facts, my office charged assault with intent to do great bodily harm less than murder. The victim appeared and testified about what occurred to her, but the Court seemed reluctant to bind over on a serious felony. I was able to adjourn the matter and bring in a medical expert to explain what these injuries meant. The District Court Judge reviewed everything and eventually agreed, somewhat reluctantly, to bind the matter over for trial on the requested charge, an added count of Assault with Intent to Murder, and Assault with a Dangerous Weapon. These are probably the best facts a prosecutor could have to prove the brutality and dangerousness of a strangulation assault, and I was repeatedly told that the likelihood of conviction on Assault with Intent to Murder was slim, and even a charge of Assault with Intent to Commit Great Bodily Harm was optimistic.

The difficulty lay with having to prove to a jury not just that a serious assault happened, but what the defendant was thinking at the time of the assault. As I will never have a printout from a suspect's brain of exactly what they were thinking, the defense can almost always argue that the defendant might have done something bad, but he did not know how bad it was. As a result, an extremely dangerous assault needs to happen, be reported to the police, have the assailant arrested and charged, educate him about the dangers of strangulation, and then, maybe, I can prove what he meant to do if it happens a second time, and the victim survives.

Batterers often use strangulation as an incredibly powerful control tactic, letting the victim know "Your life is in my hands." This causes both physical and mental suffering that is far greater than a simple assault and battery charge is designed to punish. Without injury requiring medical treatment, however, the most that can be charged under the current law is the same offense designed for a single punch in a bar fight.

SB 848 attempts to fill the gap that exists when an extremely dangerous action occurs, but the proof of intent is lacking. Batterers often will use strangulation to let the victim know who is in control. They are using a tactic that is incredibly dangerous, even deadly, but escape punishment because of the gap in the law this bill will fix. That the law currently treats a threat with a knife, where no one is actually injured, more seriously than strangulation is an affront to justice.

I was grateful to see that the Senate passed these bills unanimously, and I urge the committee to support this legislation and remedy these problems.